defense. *Contra, Connolly* v. *Bolster*, 187 Mass. 266, 72 N. E. 981; *Cushman* v. *Carbondale Fuel Co.*, 122 Ia. 656, 98 N. W. 509.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO SOMETHING ILLEGAL OR IMMORAL — RECOVERY OF PROCEEDS OF ILLEGAL TRANSACTION IN HANDS OF AGENT. — The plaintiff sent goods to the defendant, his agent, with an illegal gambling device by which the goods were to be sold. It was agreed that the proceeds should be kept separate and remitted to the plaintiff, and that title in all the property should remain in the plaintiff. *Held*, that the plaintiff can recover the proceeds of the illegal sales. *Yale Jewelry Co.* v. *Joyner*, 75 S. E. 993 (N. C.).

The law will not aid in enforcing an illegal contract. Therefore the defendant in the principal case cannot be forced to perform his contractual obligation to remit the proceeds. *Snell* v. *Dwight*, 120 Mass. 9. If the illegal transaction were completed and the proceeds handed to an agent who did not participate in the transaction, the agent could not set up the illegality of the former transaction because the obligation to pay over to the principal would arise solely from the receipt of the proceeds. *Daniels* v. *Barry*, 22 Ind. 207; *Wilson* v. *Owen*, 30 Mich. 474. Many courts have held that where an agency or partnership is for the purpose of carrying out an illegal transaction the principal or partner cannot recover the proceeds, because the relation, being inseparable from the illegal contract, is itself illegal. *Lemon* v. *Grosskopf*, 22 Wis. 447; *Leonard* v. *Poole*, 114 N. Y. 371. The opposing view is that there is a duty arising from the fiduciary relation quite disconnected from the completed illegal transaction. *Truant* v. *Elliott*, 1 B. & P. 3; *Baldwin* v. *Potter*, 46 Vt. 402. See *Woodworth* v. *Bennett*, 43 N. Y. 273, 276. But this view would be hard to support if the transaction were a serious crime. If the title to goods and proceeds, however, is always in the principal, the plaintiff need rest his claim neither on contractual nor relational obligation, and it would not seem that the existence of illegality is ever a ground for allowing third parties to deprive the plaintiff of property, as distinguished from contract, rights.

INJUNCTIONS — ACTS RESTRAINED — RESTRAINING SUIT IN A FOREIGN JURISDICTION. — The defendant brought suit in an Iowa court against the plaintiff for slander and malicious prosecution, and while that action was still pending the defendant sued the plaintiff on the same cause of action in Missouri and attached land of the plaintiff in that state. A preliminary injunction restraining the prosecution of the Missouri suit was granted, whereupon the defendant, after causing the Iowa suit to be dismissed, moved that the injunction be dissolved. *Held*, that the motion should be granted. *Jones* v. *Hughes*, 137 N. W. 1023 (Ia.). See NOTES, p. 347.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — DISTRIBUTION OF RECOVERY UNDER EMPLOYERS' LIABILITY ACT. — A brakeman was killed through the negligence of the railroad while engaged in interstate commerce. A state statute specifying the persons entitled to recover damages in such a case conflicted with the federal Employers' Liability Act. *Held*, that the federal act governs. *St. Louis, San Francisco, & Texas Ry. Co.* v. *Geer*, 149 S. W. 1178 (Tex., Ct. Civ. App.).

For a criticism of a recent contrary decision, see 25 HARV. L. REV. 565. For a general discussion on the constitutionality of the federal act, see 25 HARV. L. REV. 548.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — EMPLOYEES PROTECTED BY FEDERAL EMPLOYERS' LIABILITY ACT. — A brakeman was injured

while employed upon an intrastate train which was transporting water to a tank supplying interstate and intrastate trains. *Held*, that the federal Employers' Liability Act does not apply. *Missouri, Kansas, & Texas Ry. Co.* v. *Fesmire*, 150 S. W. 201 (Tex., Ct. Civ. App.).

A railroad employee was injured while repairing a bridge upon which a track to carry interstate commerce was to be laid. *Held*, that the federal Employers' Liability Act does not apply. *Pedersen* v. *Delaware, Lackawanna, & Western R. Co.*, 197 Fed. 537 (C. C. A., Third Circ.).

A railroad employee was injured while unloading rails to be used in replacing old rails upon a roadbed over which interstate trains passed. Apparently he was to take part in the repairing. *Held*, that the federal Employers' Liability Act does not apply. *Pierson* v. *New York, Susquehanna & Western R. Co.*, 85 Atl. 233 (N. J., Ct. Err. and App.). See NOTES, p. 354.

INTERSTATE COMMERCE — CONTROL BY STATES — TAXATION: GOODS IN TRANSIT. — Flour while in interstate transit was stopped *en route* in an intermediate state, and there repacked and blended. The flour was usually on the wharf for from ten to twenty days, and a "fair working margin" was always kept on hand. *Held*, that it is taxable by the state. *In re Holt & Co.*, 35 N. J. L. J. 307 (State Board of Equalization of Taxes). See NOTES, p. 358.

JUDGMENTS — COLLATERAL ATTACK — MERGER OF FOREIGN JUDGMENT. — The plaintiff, after obtaining a judgment in Washington based on a Massachusetts judgment, brought suit in California on the Massachusetts judgment. *Held*, that the action is maintainable. *Lilly-Brackett Co.* v. *Sonnemann*, 126 Pac. 483 (Cal.).

The defendant in the principal case contended that the Massachusetts judgment had been merged in the Washington judgment. A lien is usually created by statute on the lands of a judgment debtor within the jurisdiction. *Mitchell* v. *Wood*, 47 Miss. 231. See *Hutcheson* v. *Grubbs*, 80 Va. 251, 254. It is argued, therefore, that unless successive judgments merge, a judgment creditor can unjustly subject the judgment debtor's property to a multiplicity of record liens. See *Gould* v. *Hayden*, 63 Ind. 443, 448; 1 FREEMAN, JUDGMENTS, 4 ed., § 216. Accordingly some courts hold that where the second judgment is recovered in the same jurisdiction and gives a lien upon the same property as the first, the former judgment is merged. *Denegre* v. *Haun*, 13 Ia. 240; *Purdy* v. *Doyle*, 1 Paige (N. Y.) 557. *Contra*, *Andrews* v. *Smith*, 9 Wend. (N. Y.) 53; *Preston* v. *Perton*, Cro. Eliz. 817. Of the few cases, however, where the second judgment has been obtained in a different jurisdiction, the majority support the principal case. *Weeks* v. *Pearson*, 5 N. H. 324; *Wells* v. *Schuster-Hax National Bank*, 23 Colo. 534, 48 Pac. 809. *Contra*, *Gould* v. *Hayden*, 63 Ind. 443. The courts argue that judgments are equal securities, and that where securities are equal there is no merger. But the meaning of this arbitrary distinction is not clear. It would seem that the technical doctrine of merger should not be applied where it will work injustice. To fully realize on his judgment, a judgment creditor may need to proceed against the judgment debtor's property in more than one jurisdiction, and it would be unjust to hold that in order to acquire a lien upon lands of the judgment debtor in a second state he must lose his judgment lien in the first jurisdiction.

LARCENY — LARCENY BY TRICK — DISTINCTION BETWEEN LARCENY BY TRICK AND FALSE PRETENSES. — The defendant was indicted for grand larceny upon two counts. The first alleged that the defendant *animo furandi*, by means of false representations, obtained a sale of goods to his principal and a delivery to himself as agent. The second charged the commission of common-